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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/697,607	10/29/2003	Scott Kay	4419-4068	9622
27123	7590	06/15/2005		
MORGAN & FINNEGAN, L.L.P. 3 WORLD FINANCIAL CENTER NEW YORK, NY 10281-2101			EXAMINER BRITTAIN, JAMES R	
			ART UNIT	PAPER NUMBER
			3677	

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/697,607

Applicant(s)

KAY, SCOTT

Examiner

James R. Brittain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-6, 9-11, 14-18 and 20 are rejected under 35 U.S.C. §102(b) as being clearly anticipated by Madsen (US 1794384).

Madsen (figures 1-5) teaches a locking toggle clasp assembly for releasably coupling opposing terminal portions of a necklace comprising: a toggle bar 12 connected to a first terminal portion of the necklace; and a toggle clasp 11 connected to a second terminal portion of the necklace, the toggle clasp having an opening, wherein the toggle clasp is selectively movable between an open position, figure 4, in which the toggle bar may pass through the opening and a locked position, figures 1 and 2, in which the toggle bar is prevented from passing through the opening in the toggle loop 13 by the swivel 14. The swivel includes disk 16 that extends from a position as shown in figure 5 with the toggle loop 13 of a first size that permits the toggle bar to extend through the toggle loop to a position in which it pivots downwardly with the portion adjacent the pivot 15 impinging into the toggle loop to reduce the opening in the toggle loop to a second size that prevents the toggle bar from passing through. Figure 2 clearly shows the opening in the toggle loop reduced in size and the toggle bar will not pass through the toggle loop opening. In regard to claim 16, Madsen (figures 1-5) teaches a toggle clasp assembly for releasably coupling opposing ends of an item of jewelry, comprising: a male toggle member 12

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having a major dimension along a first axis and a minor dimension along a second axis, the male toggle member adapted to be coupled to a first end of the jewelry item such that the first axis is generally perpendicular to a major axis of the jewelry item; a female toggle member 13 defining an opening and adapted to be coupled to an opposing end of the jewelry item; and a protruding member 14 pivotally connected to the female toggle member, the protruding member selectively movable between an open position where the male toggle member can pass through the opening and a closed position where the protruding member impinges into the opening to prevent the male toggle member from passing through the opening in the toggle loop 13 by the swivel 14. The swivel includes disk 16 that extends from a position as shown in figure 5 with the toggle loop 13 of a first size that permits the toggle bar to extend through the toggle loop to a position in which it pivots downwardly with the portion adjacent the pivot 15 impinging into the toggle loop to reduce the opening in the toggle loop to a second size that prevents the toggle bar from passing through. Figure 2 clearly shows the opening in the toggle loop reduced in size and the toggle bar will not pass through the toggle loop opening. As to claim 20, Madsen (figures 1-5) teaches a method for releasably coupling opposed ends of an item of jewelry, comprising the steps of: providing a male toggle member 12 on a first end of the item of jewelry, the male member having a major dimension and a minor dimension; providing a female toggle member 13 on an opposing end of the item of jewelry, the female toggle member defining an opening that is smaller than the major dimension; pivoting a swivel 14 about the female toggle member from a closed position where the swivel impinges into the opening to prevent the male member from passing through the opening to an open position where the swivel does not impinge into the opening; inserting the male toggle member through the opening along an axis corresponding to

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the minor dimension when the swivel is in the open position; and pivoting the swivel to the closed position to impinge the swivel into the opening and releasably prevent the male toggle member from passing through the opening in the toggle loop 13 by the swivel 14. The swivel includes disk 16 that extends from a position as shown in figure 5 with the toggle loop 13 of a first size that permits the toggle bar to extend through the toggle loop to a position in which it pivots downwardly with the portion adjacent the pivot 15 impinging into the toggle loop to reduce the opening in the toggle loop to a second size that prevents the toggle bar from passing through. Figure 2 clearly shows the opening in the toggle loop reduced in size and the toggle bar will not pass through the toggle loop opening.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7, 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Madsen (US 1794384) in view of Fox (US 2004/0139586).

Madsen (figures 1-5) teaches a locking toggle clasp assembly for releasably coupling opposing terminal portions of a necklace comprising: a toggle bar 12 connected to a first terminal portion of the necklace; and a toggle clasp 11 connected to a second terminal portion of the necklace, the toggle clasp having an opening, wherein the toggle clasp is selectively movable between an open position, figure 4, in which the toggle bar may pass through the opening and a locked position, figures 1 and 2, in which the toggle bar is prevented from passing through the

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opening in the toggle loop 13 by the swivel 14. The swivel includes disk 16 that extends from a position as shown in figure 5 with the toggle loop 13 of a first size that permits the toggle bar to extend through the toggle loop to a position in which it pivots downwardly with the portion adjacent the pivot 15 impinging into the toggle loop to reduce the opening in the toggle loop to a second size that prevents the toggle bar from passing through. Figure 2 clearly shows the opening in the toggle loop reduced in size and the toggle bar will not pass through the toggle loop opening. The difference is that the swivel 14 including the disk 16 is of a size almost equal to the central opening of the annular ring portion 13. However, Fox (figures 1-4) teaches that the swivel 2 need not be so large as to cover the entire opening, but only sized to prevent removal of the toggle bar 14 from the opening 13 thereby enhancing the appearance and saving material, which is a significant cost saving in the jewelry art because of the use of expensive metals. As it would be beneficial to enhance the appearance of the fastener of Madsen while saving material, it would have been obvious to modify the relative dimensions of the ring and lever of Madsen so that there would still be some open area in the closed position as taught by Fox, since it would function equally well as evidenced by Fox and would improve the appearance and save material. In regard to claims 12 and 13, the use of the necklace fastener of Madsen upon a bracelet would have been obvious in view of Fox teaching that necklace fasteners are readily usable for other purposes such as bracelets [0036].

Claims 8, 19 and 21 are rejected under 35 U.S.C. §103(a) as being unpatentable over Madsen (US 1794384) in view of Katz (US 5410784).

Madsen (figures 1-5) teaches a locking toggle clasp assembly for releasably coupling opposing terminal portions of a necklace comprising: a toggle bar 12 connected to a first

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terminal portion of the necklace; and a toggle clasp 11 connected to a second terminal portion of the necklace, the toggle clasp having an opening, wherein the toggle clasp is selectively movable between an open position, figure 4, in which the toggle bar may pass through the opening and a locked position, figures 1 and 2, in which the toggle bar is prevented from passing through the opening in the toggle loop 13 by the swivel 14. The swivel includes disk 16 that extends from a position as shown in figure 5 with the toggle loop 13 of a first size that permits the toggle bar to extend through the toggle loop to a position in which it pivots downwardly with the portion adjacent the pivot 15 impinging into the toggle loop to reduce the opening in the toggle loop to a second size that prevents the toggle bar from passing through. Figure 2 clearly shows the opening in the toggle loop reduced in size and the toggle bar will not pass through the toggle loop opening. The difference is that friction is not used to lock the swivel in the closed position. However, friction is a common expedient to secure a locking lever in the jewelry art and Katz (figures 1, 2, 4) teaches that friction between the body 2 and latch 22 is used to hold the pivoted latch 22 in place (col. 4, lines 14-18). As it would be beneficial to provide the fastener of Madsen with a positive securement to maintain the swivel in place, it would have been obvious to modify the fastener of Madsen to utilize friction to lock the swivel in the closed position in view of Katz teaching that friction is a common expedient to provide a securement for a pivoted latch in the jewelry art.

Response to Arguments

Applicant's arguments have been fully considered but they are not persuasive.

Applicant has only one argument centered on the words "impinges into" and "to reduce the size of the opening". The argument is presented that because the device of Madsen also

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clamps the toggle bar that somehow applicant's language avoids the teachings of Madsen, but the argument is unpersuasive for two reasons. First, there is absolutely nothing in the claim construction that prevents the swivel from clamping the toggle bar. Second, all that the claim construction requires is that the swivel "impinges into" the opening in order to reduce its size and the term "impinges" doesn't even require the swivel to fit completely into the opening, only some portion need extend into the opening. In Madsen, the swivel includes disk 16 that extends from a position as shown in figure 5 with the toggle loop 13 of a first size that permits the toggle bar to extend through the toggle loop to a position in which it pivots downwardly with the portion adjacent the pivot 15 impinging into the toggle loop to reduce the opening in the toggle loop to a second size that prevents the toggle bar from passing through. Figure 2 clearly shows the opening in the toggle loop reduced in size and the toggle bar will not pass through the toggle loop opening. Applicant addresses the other rejections incorporating Fox and Katz with the same argument as for Madsen and for the reasons given above the argument is unpersuasive.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

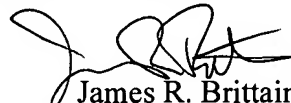
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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is (571) 272-7065. The examiner can normally be reached on M-F 5:30-2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on (571) 272-7075. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James R. Brittain
Primary Examiner
Art Unit 3677

JRB